

## ARTICLE 74:28

### HAZARDOUS WASTE

#### Chapter

74:28:21	Administration.
74:28:22	Identification and listing.
74:28:23	Standards for generators.
74:28:24	Standards for transporters.
74:28:25	Treatment, storage, and disposal.
74:28:26	Permit requirements.
74:28:27	Management of specific hazardous wastes.
74:28:28	Interim status standards for facilities.
74:28:29	Interim status for existing surface impoundments.
74:28:30	Land disposal restrictions.
74:28:31	Polychlorinated biphenyl, Deleted.
74:28:32	Toxic cleanup day, Executed.
74:28:33	Management of universal hazardous waste.
74:28:34	Special requirements for landfills and surface impoundments.

#### CHAPTER 74:28:21

#### ADMINISTRATION

#### Section

74:28:21:01	Definitions.
74:28:21:02	General standards for a hazardous waste management system.

**74:28:21:01. Definitions.** Terms used in the federal rules which are adopted by reference in this article have the following meanings. All references in this article to federal regulations are those revised as of ~~July 1, 2012~~ July 1, 2016, unless otherwise specified:

(1) "Administrator," the secretary of the Department of Environment and Natural Resources or a designee, except at:

- (a) 40 C.F.R. § 260.10, the definitions of "administrator," "regional administrator," and "hazardous waste constituent";
- (b) 40 C.F.R. Part 261, Appendix IX;
- (c) 40 C.F.R. §§ 262.55; 262.56(a); 262.56(b); and Part 262, Appendix;
- (d) 40 C.F.R. §§ 264.12(a) and 265.12(a);
- (e) 40 C.F.R. § 268.40(b);

(f) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "regional administrator," and "state/EPA agreement";

(g) 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2), (3), and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(2) "Director," the secretary of the Department of Environment and Natural Resources or a designee;

(3) "EPA," the state Department of Environment and Natural Resources, except for:

(a) Any references to "EPA identification numbers," "EPA forms," "EPA hazardous waste numbers," "EPA test methods," "EPA publications," "EPA manuals," "EPA guidance," or "EPA Acknowledgment of Consent";

(b) Any reference to EPA in the following regulations:

(i) 40 C.F.R. § 260.10, the definitions of "administrator," "electronic manifest," "electronic manifest system," "EPA region," "federal agency," "person," ~~and~~ "regional administrator," and "user of the electronic manifest system";

(ii) 40 C.F.R. Part 261, Appendix IX;

(iii) 40 C.F.R. §§ 262.21; 262.32(b); 262.51; 262.53(a); 262.53(c) to 262.53(f), inclusive; 262.54(g)(1); and Part 262, Appendix;

(iv) 40 C.F.R. §§ 264.11 and 265.11;

(v) 40 C.F.R. § 268.1(e)(3), 268.2(j) and 268.40(f);

(vi) 40 C.F.R. §§ 270.1(a)(1); 270.1(b); 270.3; 270.5; 270.10(e)(2); 270.11(a)(3); 270.32(a) and (c); 270.51; 270.72(a)(5); and 270.72(b)(5);

(vii) 40 C.F.R. § 270.2, the definitions of "administrator," "approved program or approved state," "director," "Environmental Protection Agency," "EPA," "final authorization," "permit," "person," "regional administrator," and "state/EPA agreement";

(viii) 40 C.F.R. § 273.32(a)(3);

(ix) The second reference to EPA at 40 C.F.R. §§ 264.1082(c)(4)(ii) and 265.1083(c)(4)(ii);

(x) 40 C.F.R. § 260.11(a);

(xi) 40 C.F.R. §§ 261.39 (a)(5) and 261.41;

(4) "EPA hazardous waste number," the number assigned by the secretary to each hazardous waste;

(5) "EPA identification number," the number assigned by the secretary to each generator, transporter, and treatment, storage, or disposal facility;

(6) "Existing hazardous waste management facility" or "existing facility," a facility that was in operation or for which construction commenced on or before November 19, 1980, for HSWA facilities, or before April 8, 1984, for non-HSWA facilities;

(7) "Existing tank system" or "existing component," a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation or for which installation commenced on or before July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, or June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section;



(8) "Federal Register," a newspaper of general circulation in the state of South Dakota, except at:

- (a) 40 C.F.R. § 260.11(a) and (b);
- (b) 40 C.F.R. § 270.6(a) and (b);
- (c) 40 C.F.R. § 270.10(e)(2);
- (d) 40 C.F.R. Part 261, Appendix IX;
- (e) 40 C.F.R. Part 266, Appendix IX;

(9) "HSWA tank," a tank owned or operated by a small quantity generator, a new underground tank, or a tank which cannot be entered for inspection;

(10) "New hazardous waste management facility" or "new facility," a facility that began operation, or for which construction commenced, after November 19, 1980, for HSWA facilities, and April 8, 1984, for non-HSWA facilities;

(11) "New tank system" or "new tank component," a tank system or component that will be used for the storage or treatment of hazardous waste for which installation commenced after July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, and June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section or, for the purposes of 40 C.F.R. § 264.193(g)(2) (~~July 1, 2012~~ July 1, 2016) and 40 C.F.R. § 265.193(g)(2) (~~July 1, 2012~~ July 1, 2016), for which construction commenced after July 14, 1986, for HSWA tanks and June 7, 1989, for non-HSWA tanks;

(12) "Non-HSWA tank," a tank which is not owned or operated by a small quantity generator and is either an existing underground tank or a tank that can be entered for inspection;

(13) "Region," the state of South Dakota, at these two sections:

- (a) 40 C.F.R. § 261.4(e)(3)(iii);
- (b) 40 C.F.R. § 262.42(a)(2);

(14) "Resource Conservation and Recovery Act," "RCRA," or any references to any sections of RCRA, SDCL chapter 34A-11, the South Dakota Hazardous Waste Management Act, except at:

- (a) 40 C.F.R. § 260.10, the definition of "Act" or "RCRA";
- (b) 40 C.F.R. Part 261, Appendix IX;
- (c) 40 C.F.R. Part 262, Appendix;
- (d) 40 C.F.R. §§ 270.1(a)(2) and 270.51;
- (e) 40 C.F.R. § 270.2, the definition of "RCRA";
- (f) 40 C.F.R. §§ 264.4 and 265.4;

(15) "Regional administrator," the secretary of the Department of Environment and Natural Resources or a designee, except at:

- (a) 40 C.F.R. § 260.10, the definitions of "administrator," "regional administrator," and "hazardous waste constituent";
- (b) 40 C.F.R. Part 261, Appendix IX;

- (c) 40 C.F.R. § 262.12 and Part 262, Appendix;
- (d) 40 C.F.R. § 263.11;
- (e) 40 C.F.R. §§ 264.12(a) and 265.12(a);
- (f) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "regional administrator," and "state/EPA agreement";
- (g) 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2) and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(16) "Secretary," the secretary of the Department of Environment and Natural Resources or a designee;

(17) "State," the state of South Dakota, except at:

- (a) 40 C.F.R. § 260.10, the definitions of "person," "state," and "United States";
- (b) 40 C.F.R. §§ 264.143(e)(1); 265.143(d)(1); 264.145(e)(1); 265.145(d)(1); 264.147(a)(1)(ii), (b)(1)(ii), (g)(2), and (i)(4); and 265.147(a)(1)(ii), (b)(1)(ii), (g)(2) and (i)(4); and
- (c) 40 C.F.R. § 270.2, the definitions of "approved program or approved State," "director," "final authorization," "interim authorization," "person," and "state";

(18) Any reference to 40 C.F.R. § 124.15 should be replaced with § 124.5 at the following locations: §§ 264.1030(c), 264.1050(c), 264.1080(c), and 265.1080(c);

(19) "EPA Environmental Appeals Board," the South Dakota State Circuit Court.

(20) Any reference to "United States," "U.S.," "U.S. Customs Official," "U.S. national procedures," "United Nations," "U.N.," "U.N. classification number," "Organization for Economic Cooperation and Development," "OECD," "Federal Register," "EPA Acknowledgment of Consent," "Environmental Protection Agency," "EPA," and any other Federal Agencies or Offices within Federal Agencies should be retained at §§ 262.10(d), 262.24(a)(3), 262.24(g), 262.25, 262.53, through 262.58, inclusive, 262.80 to 262.89 inclusive, 263.10(d), 263.20(a)(2), 263.20(a)(4)(iv), 263.20(a)(8), 264.12(a)(12), 264.71(a)(2)(v), 264.71(a)(3), 264.71(d), 264.(f)(4), 264.71(j), 265.12(a)(2), 265.71(a)(2)(v), 265.71(a)(3), 265.71(d), 265.71(f)(4), 265.71(j) and 266.80(a) Table (6) and (7).

**Source:** 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9.

**74:28:21:02. General standards for a hazardous waste management system.** The definitions, except as specified in § 74:28:21:01, references, petitions, variances, and other



procedures in 40 C.F.R. §§ 260.10 to 260.43, inclusive, (~~July 1, 2012~~ July 1, 2016), constitute the general hazardous waste management system.

**Source:** 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9.

## CHAPTER 74:28:22

### IDENTIFICATION AND LISTING

#### Section

74:28:22:01 Identification and listing of hazardous wastes.

**74:28:22:01. Identification and listing of hazardous wastes.** Solid wastes which are subject to regulation as hazardous wastes are those identified and listed in 40 C.F.R. §§ 261.1 to ~~261.41~~ 261.1089, inclusive, except 40 C.F.R. § 261.4(b)(16) and (17); §§ 261.140 to 261.151, inclusive, and Appendixes I, VII, VIII, and IX (~~July 1, 2012~~ July 1, 2016). ~~In addition to these wastes, polychlorinated biphenyls in concentrations of 50 parts per million and above are subject to the regulations for treatment, storage, and disposal in chapter 74:28:31.~~

**Source:** 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 16 SDR 203, effective May 27, 1990; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-8.

**Law Implemented:** SDCL 34A-11-8.

## CHAPTER 74:28:23

### STANDARDS FOR GENERATORS

#### Section

74:28:23:01

Standards for generators.

**74:28:23:01. Standards for generators.** The standards for generators of hazardous waste are those in 40 C.F.R. §§ 262.10 to ~~262.70~~262.89, inclusive, except 40 C.F.R. § 262.10(j) and (k), and § 262.34(j) to (l), inclusive; §§ 262.200 to 262.216, inclusive, and the appendix to 40 C.F.R. Part 262 (~~July 1, 2012~~July 1, 2016).

**Source:** 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-16.

## CHAPTER 74:28:24

### STANDARDS FOR TRANSPORTERS

#### Section

74:28:24:01

Standards for transporters.

**74:28:24:01. Standards for transporters.** The standards for transporters of hazardous waste are those in 40 C.F.R. §§ 263.10 to 263.31, inclusive (~~July 1, 2012~~July 1, 2016).

**Source:** 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective



August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-16.

## CHAPTER 74:28:25

### TREATMENT, STORAGE, AND DISPOSAL

#### Section

- 74:28:25:01 Standards for hazardous waste treatment, storage, and disposal facilities.
- 74:28:25:03 Assessment of existing tank system's integrity.
- 74:28:25:04 Containment and detection of releases from tanks.
- 74:28:25:05 Definition of new and existing drip pads for certain wood preserving wastes.

#### **74:28:25:01. Standards for hazardous waste treatment, storage, and disposal facilities.**

The standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R. §§ 264.1 to 264.1202, inclusive, except for 40 C.F.R. §§ 264.1(f), 264.1(g)(12), 264.18(c), 264.149, 264.150, 264.191(a) and (c), 264.193(a), 264.301(l), 264.570(a), 264.1030(d), 264.1050(g), and 264.1080(e), (f), and (g); and Appendixes I, IV, V, VI, and IX and §§ 267.1 to 267.1108, inclusive, except § 267.71(d) (~~July 1, 2012~~ July 1, 2016).

**Source:** 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

**Cross-Reference:** Exposure information from landfills and surface impoundments, § 74:28:34:01.

**74:28:25:03. Assessment of existing tank system's integrity.** For each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 264.193 (~~July 1, 2012~~ July 1, 2016), the owner or operator must determine that the tank system is not leaking or is unfit for use.



The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota, in accordance with 40 C.F.R. § 270.11(d) (~~July 1, 2012~~ July 1, 2016), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

For existing tank systems or existing components, a tank system or component installation is considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within one year.

**Source:** 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-12, 34A-11-13, 34A-11-14.

**74:28:25:04. Containment and detection of releases from tanks.** To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this chapter must be provided, except as provided in 40 C.F.R. § 264.193(f) and (g) (~~July 1, 2012~~ July 1, 2016), as follows:

- (1) For all new tank systems or components, before they are put into service;
- (2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;
- (3) For those existing tank systems of known and documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;
- (4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January 12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and



(5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time intervals required in subdivisions (1) to (4), inclusive, of this section, except that the date that a material becomes a hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

**Source:** 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-12, 34A-11-13, 34A-11-14.

**74:28:25:05. Definition of new and existing drip pads for certain wood preserving wastes.** The requirements of 40 C.F.R. Part 264, Subpart W (~~July 1, 2012~~ July 1, 2016) apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into before December 6, 1990, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) (~~July 1, 2012~~ July 1, 2016) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) (~~July 1, 2012~~ July 1, 2016) to install a leak collection system applies only to those drip pads that are constructed after September 29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

**Source:** 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-12, 34A-11-13, 34A-11-14.

## CHAPTER 74:28:26



## PERMIT REQUIREMENTS

### Section

74:28:26:01 Requirements to permit a treatment, storage, or disposal facility.

**74:28:26:01. Requirements to permit a treatment, storage, or disposal facility.** The requirements to permit a treatment, storage, or disposal facility are those in 40 C.F.R. §§ 270.1 to 270.320, inclusive, except §§ 270.1(c)(2)(ix) and 270.14(b)(18); and Appendix I (~~July 1, 2012~~July 1, 2016); 40 C.F.R. §§ 124.1(b), 124.2(a), 124.3(a), 124.5(a), 124.5(c), 124.6(a), (b), (d), and (e), 124.11, 124.31(b), (c), and (d), 124.32(b) and (c), 124.33(b) to (f), and 124.200 to 124.214, inclusive (all ~~July 1, 2012~~July 1, 2016); and 40 C.F.R. §§ 144.31(g)(1) to (3), inclusive (July 1, 1992). Any interested person may contest the issuance of a permit by following the procedures in chapter 74:09:01.

The requirements for a preapplication public meeting and notice found in 40 C.F.R. § 124.31 (~~July 1, 2012~~July 1, 2016) apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units, to hazardous waste permit applications seeking coverage under a standardized permit under § 270 subpart J (~~July 1, 2012~~July 1, 2016), and to hazardous waste permit applications seeking renewal of permits if the renewal application is proposing a significant change in facility operations. A significant change to a hazardous waste permit is any change that is considered a Class 3 permit modification under 40 C.F.R. § 270 (~~July 1, 2012~~July 1, 2016). A significant change to a standardized permit is defined at § 124.211(c) (~~July 1, 2012~~July 1, 2016). The requirements of this paragraph for a preapplication public meeting and notice do not apply to hazardous waste permit applications or permit modifications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

The requirements for public notice at the application stage found in 40 C.F.R. § 124.32 (~~July 1, 2012~~July 1, 2016) apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units and to applications seeking renewal of permits for such units under 40 C.F.R. § 270.51 (~~July 1, 2012~~July 1, 2016). The requirements for public notice at the application stage do not apply to hazardous waste units permitted under a standardized permit under 40 C.F.R. § 270 subpart J (~~July 1, 2012~~July 1, 2016), or hazardous waste permit modifications under 40 C.F.R. § 270.42 (~~July 1, 2012~~July 1, 2016) or applications submitted for the sole purpose of conducting post-closure activities or post-closure and corrective action at a facility.

The requirement for an information repository found in 40 C.F.R. § 124.33 (~~July 1, 2012~~July 1, 2016) applies to all applications seeking a hazardous waste permit for hazardous waste management units.

**Source:** 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August



29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-12, 34A-11-13, 34A-11-14, 34A-11-15.

**Cross-Reference:** Special requirements for landfills and surface impoundments, § 74:28:34:01.

## CHAPTER 74:28:27

### MANAGEMENT OF SPECIFIC HAZARDOUS WASTES

#### Section

74:28:27:01 Requirements for the management of specific hazardous wastes.

**74:28:27:01. Requirements for the management of specific hazardous wastes.** The requirements for the management of specific hazardous wastes and specific types of hazardous waste management facilities are those in 40 C.F.R. §§ 266.20 to 266.360, inclusive, and Appendixes I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, and XIII and §§ 279.1 to 279.82, inclusive, except 40 C.F.R. § 279.82(b) and (c) (~~July 1, 2012~~ July 1, 2016).

The language in 40 C.F.R. § 279.82(a) "except when such activity takes place in one of the states listed in paragraph (c) of this section" is not incorporated by reference.

**Source:** 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12.

## CHAPTER 74:28:28

### INTERIM STATUS STANDARDS FOR FACILITIES

#### Section

74:28:28:01 Interim status standards for treatment, storage, and disposal facilities.



74:28:28:03      Assessment of existing tank system's integrity.  
74:28:28:04      Containment and detection of releases from tanks.  
74:28:28:05      Definition of new and existing drip pads for certain wood preserving wastes.

**74:28:28:01. Interim status standards for treatment, storage, and disposal facilities.**

The interim status standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R. § 144.1(h); §§ 265.1 to 265.1202, inclusive, except 40 C.F.R. §§ 265.1(c)(4), 265.1(c)(15), 265.18, 265.149, 265.150, 265.191(a) and (c), 265.193(a), 265.440(a), 265.1030(c), 265.1050(f), and 265.1080(e), (f), and (g); and Appendixes I, III, IV, V, and VI (~~July 1, 2012~~July 1, 2016).

**Source:** 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

**Cross-Reference:** Special requirements for landfills and surface impoundments, § 74:28:34:01.

**74:28:28:03. Assessment of existing tank system's integrity.** For each tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 265.193 (~~July 1, 2012~~July 1, 2016), the owner or operator must determine that the tank system is not leaking or is unfit for use.

The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota in accordance with 40 C.F.R. § 270.11(d) (~~July 1, 2012~~July 1, 2016), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the wastes become a hazardous waste.

**Source:** 24 SDR 11 effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36



SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34-11-10, 34A-11-12, 34A-11-16.

**74:28:28:04. Containment and detection of releases from tanks.** To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this chapter must be provided, except as provided in 40 C.F.R. § 265.193(f) and (g) (~~July 1, 2012~~July 1, 2016) as follows:

- (1) For all new tank systems or components, before they are put into service;
- (2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;
- (3) For those existing tank systems of known or documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;
- (4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January 12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and
- (5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time interval required in subdivisions (1) to (4), inclusive, of this section, except that the date that a material becomes hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

**Source:** 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

**74:28:28:05. Definition of new and existing drip pads for certain wood preserving wastes.** The requirements of 40 C.F.R. Part 265, Subpart W (~~July 1, 2012~~July 1, 2016) apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered



into binding financial or other agreements for construction prior to December 6, 1990. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) (~~July 1, 2012~~July 1, 2016) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) (~~July 1, 2012~~July 1, 2016) to install a leak collection system applies only to those drip pads that are constructed after September 29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

**Source:** 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

## CHAPTER 74:28:30

### LAND DISPOSAL RESTRICTIONS

#### Section

74:28:30:01 Land disposal restrictions.

**74:28:30:01. Land disposal restrictions.** The requirements for hazardous wastes that are restricted from land disposal are those in 40 C.F.R. §§ 268.1 to 268.4, inclusive; 40 C.F.R. §§ 268.7 to 268.50, inclusive, except 40 C.F.R. §§ 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44; and Appendixes III, IV, VI, VII, VIII, IX, and XI (~~July 1, 2012~~July 1, 2016).

**Source:** 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.



**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

## CHAPTER 74:28:33

### MANAGEMENT OF UNIVERSAL HAZARDOUS WASTE

#### Section

74:28:33:01      Management of universal hazardous waste.

**74:28:33:01. Management of universal hazardous waste.** The standards for management of universal hazardous waste are those in 40 C.F.R. §§ 273.1 to 273.81, inclusive (~~July 1, 2012~~July 1, 2016).

**Source:** 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013.

**General Authority:** SDCL 34A-11-9.

**Law Implemented:** SDCL 34A-11-9, 34A-11-10, 34A-11-16.